



## **FEDERAL COMMUNICATIONS COMMISSION**

**[MB Docket No. 22-53; FCC DA 22-115; FR ID 71980]**

**Snake River Radio, LLC, Radio Station KPCQ(AM), Chubbuck, ID**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document commences a hearing to determine (a) whether the license renewal application for AM radio station KPCQ, Chubbuck, ID should be granted or denied due to the station's history of silence or low power operations in the period when Snake River Radio, LLC (SRR) was the station's licensee, and (b) whether the station's license automatically expired due to failure to operate with authorized facilities for a period of twelve consecutive months.

**DATES:** Persons desiring to participate as parties in the hearing shall file a petition for leave to intervene not later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

**ADDRESSES:** File documents with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, with a copy mailed to each party to the proceeding. Each document that is filed in this proceeding must display on the front page the docket number of this hearing, "MB Docket No. 22-53."

**FOR FURTHER INFORMATION CONTACT:** Albert Shuldiner, Media Bureau, (202) 418-2721.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Hearing Designation Order and Notice of Opportunity for Hearing (Order), MB Docket No. 22-53, FCC DA 22-115, adopted February 7, 2022 and released February 8, 2022. The full text of the Order is available online by using the search function for MB Docket No. 22-53 on the Commission's ECFS web page at <http://apps.fcc.gov/ecfs/>.

**Summary of the Hearing Designation Order**

1. A broadcast licensee's authorization to use radio spectrum in the public interest carries with it the obligation that the station must serve its community, providing programming responsive to local needs and interests. Broadcast licensees also are required to operate in compliance with the Communications Act of 1934, as amended (Act) and the Commission's rules (Rules). These requirements include the obligation to transmit potentially lifesaving national level Emergency Alert System (EAS) messages in times of emergency and to engage in periodic tests to ensure that their stations are equipped to do so.

2. The basic duty of broadcast licensees to serve their communities is reflected in the license renewal provisions of the Act. In 1996, Congress revised the Commission's license renewal process and the renewal standards for broadcast stations by adopting section 309(k) of the Act, 47 U.S.C. 309(k). Section 309(k)(1) of the Act provides that the Commission shall grant a license renewal application if it finds, with respect to the applying station, that during the preceding license term: (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or the Rules; and (c) there have been no other violations by the licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse. Section 309(k)(2) of the Act provides that if a station fails to meet the foregoing standard, the Commission may deny the renewal application pursuant to section 309(k)(3) or grant the application on appropriate terms and conditions, including a short-term renewal. Section 309(k)(3) of the Act provides that if the Commission determines, after notice and opportunity for hearing, that the licensee has failed to meet the standard of section 309(k)(1) and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall issue an order denying the license renewal application for the station.

3. Section 312(g) of the Act, 47 U.S.C. 312(g), which Congress also added in 1996 and then amended in 2004, provides: If a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast

station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness.

4. Thus, section 312(g) has relieved the Commission of the need to conduct license renewal or revocation proceedings, with their lengthy and resource-intensive procedural requirements, including evidentiary hearings, for stations that remain silent for extended periods of time. However, in response to section 312(g), some licensees of silent stations have adopted a practice of resuming operation for a short period of time, in some cases as little as a day or less, before the one-year limit in section 312(g) applies and the station license automatically expires. Other stations have alternated between periods of silence and operations with minimal power levels—in some cases as low as five watts—that cover a small portion of their service areas and may be insufficient to allow them to provide service to their communities of license.

5. These practices raise a question as to whether the licenses for such stations should be renewed pursuant to section 309(k) of the Act, 47 U.S.C. 309(k). In 2001, the Commission cautioned “all licensees that . . . a licensee will face a very heavy burden in demonstrating that it has served the public interest where it has remained silent for most or all of the prior license term.” The policy against allowing extended periods of silence or minimal operation by licensed stations is to ensure “that scarce broadcast spectrum does not lie fallow and unavailable to others capable of instituting and maintaining service to the public.” In addition to enforcing section 312(g) of the Act, 47 U.S.C. 312(g), the Commission has stressed its interest in promoting efficient use of radio broadcast spectrum for the benefit of the listening public in several different contexts since the enactment of section 312(g). These concerns about efficient use of spectrum are also reflected in the Commission’s statutory authority to award licenses at auction.

6. The KPCQ license renewal application is designated for hearing to determine whether the station's license should be renewed in light of the station's minimal record of operation during SRR's tenure as licensee. We are also designating the question of whether the station's license expired pursuant to section 312(g) of the Act, 47 U.S.C. 312(g).

7. SRR consummated the assignment of the KPCQ license from Inspirational Family Sunny Radio, Inc. on February 1, 2018. KPCQ's operational history during SRR's tenure as licensee is that the station was silent for 1,077 days out of 1,399 days in the period from February 1, 2018 to October 1, 2021 (80% of the time) and operated only 149 days in 2018, two days in 2019, one day in 2020, and 110 days in the portion of 2021 ending on October 1, 2021 (20% of the time). After the license term ended on October 1, 2021, the station remained on the air 100% of the time.

8. SRR reported that KPCQ initially went silent when the site owner required that SRR remove the station's tower on June 30, 2018. However, on June 26, 2019, SRR filed a notice of resumption stating that the Station had resumed operation using its licensed facilities on June 15, 2019. This discrepancy is not mentioned or explained in the exhibit to the license renewal application. Because it is improbable that SRR was able to resume operation with KPCQ's licensed facilities after dismantling its tower, we are designating an issue to determine whether the station's license expired pursuant to section 312(g) of the Act, 47 U.S.C. 312(g), because the station failed to operate with its authorized facilities for more than 12 months.

9. KPCQ went silent again on June 17, 2019, when SRR claimed that a construction crew clipped and severed a tower guy wire, causing collapse of the tower. This is also not explained in the license renewal application. On June 24, 2019, SRR filed an application for construction permit to change site, which was granted on September 12, 2019, expiring on September 12, 2022. Subsequently, on June 14, 2020, KPCQ operated for one day, using a temporary long wire facility, which the license renewal application characterized as operating for "less than 30 days." KPCQ went silent again when that facility was destroyed by a construction crew, and

SRR requested extension of silent authority because it was still constructing its new facility. KPCQ remained silent until June 14, 2021, when it resumed operation using program test authority prior to filing its license application to cover the construction permit. KPCQ has operated since that date, while its license application remains pending.

10. On June 24, 2020, SRR filed the station's license renewal application. Section 309(k)(1) of the Act, 47 U.S.C. 309(k), provides that grant of a renewal application is appropriate if we find that (1) the station has served the public interest, convenience, and necessity, (2) there have been no serious violations of the Act or the Rules, and (3) there have been no other violations that, taken together, constitute a pattern of abuse. When such a finding cannot be made on the basis of the application, section 309(k) provides that the license renewal application will be designated for a hearing. Because of KPCQ's extended periods of silence during SRR's tenure as licensee, and because substantial and material questions of fact exist concerning whether the station's license expired automatically under section 312(g) of the Act, 47 U.S.C. 312(g), we are unable to find that grant of the renewal application is in the public interest. Accordingly, we designate this matter for hearing.

11. The Commission recently supplemented its formal hearing processes applicable to the revocation of Title III licenses by adopting Rules that, *inter alia*, expand the use of a hearing procedure that relies in appropriate cases on written submissions and documentary evidence. These hearing proceedings are resolved on a written record consisting of affirmative case, responsive case, and reply case submissions, along with all associated evidence in the record, including stipulations and agreements of the parties and official notice of material facts. Based on that record, the presiding officer will issue an Initial Decision pursuant to section 409(a) of the Act, 47 U.S.C. 409(a), and sections 1.267 and 1.274(c) of the Rules, 47 CFR 1.267, 1.274(c). Based on the information before us, we believe this matter can be adequately resolved on a written record, and we therefore find that this is an appropriate case for use of those procedures.

12. All parties shall file a timely notice of appearance in accordance with the Rules.

13. After release of this *Hearing Designation Order and Notice of Opportunity for Hearing*, the presiding officer shall promptly release an Initial Case Order. The Initial Case Order shall put all parties on notice that they are expected to be fully cognizant of Part I of the Rules concerning Practice and Procedure, 47 CFR part 1, subparts A and B. The Initial Case Order shall also set a date for the initial status conference and a date by which each party should file a pre-conference submission that would include (a) whether discovery is expected in this case, and if so, a proposed discovery schedule; (b) any preliminary motions they are intending to file; and (c) a proposed case schedule. The parties' pre-conference submission should also indicate whether they request that a Protective Order be entered in this case.

14. In accordance with section 1.246 of the Rules, 47 CFR 1.246, any party may serve upon any other party written requests for the admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact. Such requests shall be served within twenty (20) days after the deadline for filing a notice of appearance unless the presiding officer sets a different time frame.

15. During the initial status conference, the presiding officer shall set the case schedule, including any deadlines by which the parties should submit the motions they identified in their pre-conference submissions. If discovery is anticipated, the presiding officer shall also set the discovery period. The presiding officer shall also set the deadlines for the parties' affirmative case, responsive case, and reply case submissions in accordance with sections 1.371-1.377 of the Rules, 47 CFR 1.371-1.377. If the parties have requested the entrance of a Protective Order, the presiding officer shall also set a deadline by which a joint proposed Protective Order shall be submitted for consideration. In accordance with section 1.248(b) of the Rules, 47 CFR 1.248(b), the presiding officer may adopt a schedule to govern the hearing proceeding during the status conference or in an order following the conference.

16. Additional status conferences may be scheduled throughout the course of the proceeding at the request of the parties and/or at the discretion of the presiding officer. Any requests by a party for a status conference must be made in writing to the presiding officer and shall be copied on all other parties.

17. In accordance with section 1.248 of the Rules, 47 CFR 1.248, an official transcript of all case conferences shall be made, unless the parties and the presiding officer agree to forego a transcript. Transcripts shall be made available to the public as part of the official record in the Commission's Electronic Comment Filing System (ECFS) in MB Docket No. 22-53.

18. The Commission, in section 1.351 of the Rules, 47 CFR 1.351, has adopted the evidentiary standard set forth in the formal APA hearing requirements. In relevant part, section 1.351 of the Rules now states, "any oral or documentary evidence may be adduced, but the presiding officer shall exclude irrelevant, immaterial, or unduly repetitious evidence." The parties remain free to make evidentiary arguments based on the Federal Rules of Evidence.

19. Any person or entity seeking status as a party in this proceeding must file a petition to intervene or petition for leave to intervene in accordance with section 1.223 of the Rules, 47 CFR 1.223.

20. Motions to enlarge, change, or delete issues to be considered in this proceeding shall be allowed, consistent with section 1.229 of the Rules, 47 CFR 1.229.

21. This hearing proceeding is a "restricted" proceeding pursuant to section 1.1208 of the Rules, 47 CFR 1.1208, and thus *ex parte* presentations to or from Commission decision-making personnel, including the presiding officer and her staff and staff of the Commission's Media Bureau, are prohibited, except as otherwise provided in the Rules.

22. All pleadings in this proceeding, including written submissions such as letters, discovery requests and objections and written responses thereto, excluding confidential and/or other protected material, must be filed in MB Docket No. 22-53 using ECFS. ECFS shall also act as

the repository for records of actions taken in this proceeding, excluding confidential and/or other protected material, by the presiding officer and the Commission.

23. The caption of any pleading filed in this proceeding, as well as all letters, documents, or other written submissions including discovery requests and objections and responses thereto, shall indicate whether it is to be acted upon by the Commission or the presiding officer. The presiding officer shall be identified by name.

24. Electronic service on the Enforcement Bureau shall be made using the following email address: EBHearings@fcc.gov.

25. To the extent any party to this proceeding wishes to submit materials or information that it would like withheld from the public record, it may do so in accordance with the procedures set forth in section 1.314 of the Rules, 47 CFR 1.314. The parties may also enter into a Protective Order initiated as described above. As stated above, requests for a Protective Order should be made in the parties' pre-conference submission in accordance with the schedule set forth in the Initial Case Order.

26. The presiding officer shall issue an Initial Decision on the issues set forth herein, as well as any other issues designated for hearing in the course of the proceeding. This Initial Decision shall contain, at a minimum, findings of fact and conclusions of law, as well as the reasons or basis therefor, and the appropriate rule or order or policy and the sanction, relief or denial thereof, as appropriate.

27. *Accordingly, it is ordered* that, pursuant to sections 312(a)(2) and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a)(2) and 312(c), and section 1.91(a) of the Commission's Rules, 47 CFR 1.91(a), and pursuant to authority delegated under section 0.283 of the Commission's Rules, 47 CFR 0.283, the captioned application *is designated for hearing* in a consolidated proceeding before the FCC Administrative Law Judge, at a time and place to be specified in a subsequent order, upon the following issues: (a) To determine, with respect to station KPCQ(AM), Chubbuck, Idaho, whether, during the preceding license term, (i)

the station has served the public interest, convenience, and necessity, (ii) there have been any serious violations by the licensee of the Communications Act of 1934, as amended, or the rules and regulations of the Commission, and (iii) there have been any other violations of the Communications Act of 1934, as amended, or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse; (b) to determine, with respect to station KPCQ(AM), Chubbuck, Idaho, whether the station's license expired automatically pursuant to section 312(g) of the Communications Act of 1934, as amended, 47 U.S.C. 312(g), because the station failed to operate with its authorized facilities for more than 12 months; and (c) in light of the evidence adduced pursuant to issues (a) and (b) above, whether the captioned application for renewal of the license for station KPCQ(AM) should be (1) dismissed as moot because the station's license expired automatically pursuant to section 312(g) of the Communications Act of 1934, as amended, 47 U.S.C. 312(g), (2) granted on such terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted, or (3) denied due to failure to satisfy the requirements of section 309(k)(1) of the Communications Act of 1934, as amended, 47 USC 309(k)(1).

28. *It is further ordered* that, pursuant to section 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(c), and section 1.91(c) of the Commission's Rules, 47 CFR 1.91(c), in order to avail itself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, Snake River Radio, LLC, in person or by an attorney, *shall file* within 20 days of the mailing of this *Hearing Designation Order and Notice of Opportunity for Hearing*, a written appearance stating its intention to appear at the hearing and present evidence on the issues specified above.

29. *It is further ordered*, pursuant to sections 1.221(c) of the Commission's Rules, 47 CFR 1.221(c), that if Snake River Radio, LLC fails to file a written appearance within the time specified above, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond

expiration of said 20 days, the pending application will be dismissed with prejudice for failure to prosecute.

30. *It is further ordered* that the Chief, Enforcement Bureau, *is made a party* to this proceeding without the need to file a written appearance.

31. *It is further ordered* that, in accordance with section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), and section 1.254 of the Commission's Rules, 47 CFR 1.254, the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issues at paragraph 27 (a)-(c) *shall be* upon Snake River Radio, LLC.

32. *It is further ordered* that a copy of each document filed in this proceeding subsequent to the date of adoption of this *Hearing Designation Order and Notice of Opportunity for Hearing shall be served* on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service copy *shall be addressed* to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554.

33. *It is further ordered* that the parties to the captioned application shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 311(a)(2), and section 73.3594 of the Commission's Rules, 47 CFR 73.3594, *give notice* of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the satisfaction of such requirements as mandated by section 73.3594 of the Commission's Rules, 47 CFR 73.3594.

34. *It is further ordered* that a copy of this Hearing Designation Order and Notice of Opportunity for Hearing shall be sent via Certified Mail, Return Receipt Requested, and by regular first-class mail to Snake River Radio, LLC, Ted Austin, PO Box 17, St. Anthony, ID 83445 and Jeffrey L Timmons, Esq., Timmons Communications Law, 974 Branford Lane NW, Lilburn, GA 30047-2680.

35. *It is further ordered* that the Secretary of the Commission shall cause to have this Hearing Designation Order and Notice of Opportunity for Hearing, or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION.

**Thomas Horan,**  
*Chief of Staff,*  
*Media Bureau.*

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